

**FILED**

**SEP 18 2017**

Clerk, U.S. Courts  
District Of Montana  
Missoula Division

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

MONTANA TRUCKS LLC,

Plaintiff,

vs.

UD TRUCKS NORTH AMERICA INC,  
f/k/a NISSAN DIESEL AMERICA INC.,  
and UD TRUCKS CORP., f/k/a NISSAN  
DIESEL MOTOR CO., LTD.,

Defendants.

CV 12-23-M-DWM

ORDER

On August 14, 2017, counsel for Plaintiff Montana Trucks LLC withdrew from this matter. (*See* Order Granting Leave, Doc. 148.) Montana Trucks was required to obtain new counsel within two weeks or face dismissal for failure to prosecute. (*Id.*) Montana Trucks did not do so, and an order was issued August 30, requiring Montana Trucks show good cause before September 13, 2017, as to why this matter should not be dismissed. (Doc. 149.) That Order was sent to the

principals of Montana Trucks, both electronically and physically. (*See id.*).

Montana Trucks has not responded.

This matter has been pending in either this Court or the Ninth Circuit Court of Appeal since February of 2012. (*See* Doc. 1.) It has gone through a complete round of dispositive briefing, an appeal, and additional dispositive briefing on remand. Trial is currently set for November 13, 2017. (Sched. Or., Doc. 115.) Defendant UD America currently has a second motion for summary judgment pending, which became ripe on August 25, 2017. (*See* Doc. 142, 143.) Montana Trucks was given the opportunity to show cause that it is attempting to move this litigation forward. It has not done so. Rather, it has failed to prosecute this matter and comply with this Court's orders.

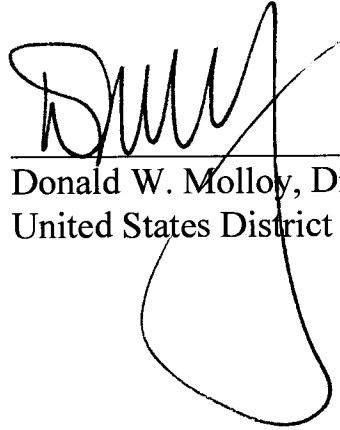
Accordingly, IT IS ORDERED that the above-captioned action is DISMISSED WITH PREJUDICE. Fed. R. Civ. P. 41(b). All pending deadlines are VACATED and motions DENIED as MOOT. The jury trial set for November 13, 2017, is VACATED.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter a judgment of dismissal and close the case file. The Clerk is also directed to send this Order and Judgment to the principals of Montana Trucks at:

Randy Botsford  
1212 Creek Crossing Road  
Missoula, MT 59802

Mark Byington  
2046 South 8th Street West  
Missoula, MT 59801

DATED this 18<sup>th</sup> day of September, 2017.

A handwritten signature in black ink, appearing to read 'DMolloy', is written over a horizontal line. Below the line, the text 'Donald W. Molloy, District Judge' and 'United States District Court' is printed. A large, loopy flourish extends from the bottom of the signature line.

Donald W. Molloy, District Judge  
United States District Court